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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JESSE PEREZ,

Plaintiff,

v.

J. PRELIP, et al,

Defendants.

C 13-5359 VC (PR)

STIPULATED PROTECTIVE ORDER

Judge: The Honorable Vince Chhabria
Trial Date: Not Scheduled
Action Filed: November 19, 2013

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information, including records of the California Department of Corrections and Rehabilitation (“CDCR”) and Pelican Bay State Prison (“Pelican Bay”) that concern prison management or could threaten prison safety and security, for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties stipulate to and petition the Court to enter the following Stipulated Protective Order (“Order”). The parties acknowledge that this Order

1 does not confer blanket protections on all disclosures or responses to discovery, and that the
 2 protection it affords from public disclosure and use extends only to the limited information or
 3 items that are entitled to confidential treatment under the applicable legal principles. The Parties
 4 further acknowledge, as forth in Section 12.3 below, that this Order does not entitle them to file
 5 confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the
 6 procedures that must be followed and the standards that will be applied when a Party seeks
 7 permission from the Court to file material under seal.

8 Defendants will only designate materials as CONFIDENTIAL or CONFIDENTIAL –
 9 ATTORNEYS’ EYES ONLY under the Order if the materials contain information that has been
 10 deemed confidential by CDCR or Pelican Bay and has been restricted from general distribution,
 11 including but not limited to inmates, parolees, and the public.

12 2. DEFINITIONS

13 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 14 information or items under this Order.

15 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 16 generated, stored or maintained) or tangible things that a Party has designated in good-faith to be
 17 confidential. The criteria for such designation shall be whether the Party has a good-faith belief
 18 that the information is entitled to protection from disclosure under Federal Rule of Civil
 19 Procedure 26(c) or California state law, including but not limited to, internal documents of CDCR
 20 or Pelican Bay regarding prison management, safety, and security.

21 2.3 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
 22 information (regardless of how it is generated, stored or maintained) or tangible things that a
 23 Party has designated in good-faith to be confidential and for attorneys’ eyes only. The criteria for
 24 such designation shall be whether the Party has a good-faith belief that the information is entitled
 25 to protection from disclosure to non-attorneys, because such information threatens the safety of
 26 individuals or inmates, or threatens the safety and security of a prison. “Attorneys” shall be
 27 limited to the counsel of record in this case and their support staff.

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1 2.4 Designating Party: a Party or Non-Party that designates information or items as
2 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 2.5 Disclosure or Discovery Material: all items or information, regardless of the
4 medium or manner in which it is generated, stored, or maintained (including, among other things,
5 testimony, transcripts, and tangible things), that are produced, made available for inspection, or
6 generated in disclosures or responses to discovery in this matter.

7 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
8 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
9 consultant in this action.

10 2.7 Non-Party: any natural person, partnership, corporation, association, or other legal
11 entity not named as a Party to this action.

12 2.8 Counsel of Record: attorneys who are retained to represent or advise a party to
13 this action and have appeared in this action on behalf of that party or are affiliated with a law firm
14 which has appeared on behalf of that party, as well as their support staff. No inmate, former
15 inmate, or relative of a Party shall qualify as support staff in this case.

16 2.9 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, retained experts, and Counsel.

18 2.10 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this action.

20 2.11 Professional Vendors: persons or entities that provide litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
22 organizing, storing, or retrieving data in any form or medium) and their employees and
23 subcontractors. Professional Vendors who visit Pelican Bay, or any other prison, must comply
24 with the institution’s rules and entry procedures, as well as any applicable portions of the
25 Department Operations Manual and the California Code of Regulations.

26 2.12 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

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1 2.13 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

4 The protections conferred by this Order cover not only Protected Material (as defined
5 above), but also: (1) any information copied or extracted from Protected Material; (2) all copies,
6 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
7 or presentations by Parties or their Counsel that reveal Protected Material. However, the
8 protections conferred by this Order do not cover the following information: (a) any information
9 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
10 public domain after its disclosure to a Receiving Party as a result of publication not involving a
11 violation of this Order, including becoming part of the public record through trial or otherwise;
12 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
13 Receiving Party after the disclosure from a source who obtained the information lawfully and is
14 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
15 trial shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations imposed by
18 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
19 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
20 claims and defenses in this action, with or without prejudice; and (2) final judgment after the
21 completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this action,
22 including the time limits for filing any motions or applications for extension of time under
23 applicable law.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
26 or Non-Party that designates information or items for protection under this Order must take care
27 to limit any such designation to specific material that qualifies under the appropriate standards.
28 The Designating Party must designate for protection only those parts of material, documents,

1 items, or oral or written communications that qualify – so that other portions of the material,
 2 documents, items, or communications for which protection is not warranted are not swept
 3 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized designations are
 4 prohibited. Designations that are shown to be clearly unjustified or that have been made for an
 5 improper purpose (e.g., to unnecessarily encumber or retard the case development process or to
 6 impose unnecessary expenses and burdens on other parties) expose the Designating Party to
 7 sanctions. If it comes to a Designating Party's attention that information or items that it
 8 designated for protection do not qualify for protection, the Designating Party must promptly
 9 notify all other Parties that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order,
 11 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
 12 protection under this Order must be clearly so designated before the material is disclosed or
 13 produced.

14 Designation in conformity with this Order requires:

15 (a) for information in documentary form (e.g., paper or electronic documents, but
 16 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 17 Party affix the legend “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES
 18 ONLY” to each page that contains protected material. If only a portion or portions of the material
 19 on a page qualifies for protection, the Producing Party also must clearly identify the protected
 20 portion(s) (e.g., by making appropriate markings in the margins).

21 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 22 Designating Party identify all protected testimony within 7 business days of a hearing where no
 23 court reporter was present, or, in the case of a proceeding where a court reporter is present, within
 24 7 business days of receipt of the transcript.

25 (c) for information produced in some form other than documentary and for any other
 26 tangible items, that the Producing Party affix in a prominent place on the exterior of the item,
 27 container, or containers in which the information or item is stored the legend “CONFIDENTIAL”
 28 or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the

1 information or item warrant protection, the Producing Party, to the extent practicable, shall
2 identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
4 information or items does not, standing alone, waive the Designating Party's right to secure
5 protection under this Order for such material, and the Receiving Party must make reasonable
6 efforts to assure that the material is treated in accordance with the provisions of this Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
9 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
11 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
12 challenge a confidentiality designation by electing not to mount a challenge promptly after the
13 original designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
15 process by providing written notice to the Designating Party of each designation it is challenging
16 and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has
17 been made, the written notice must recite that the challenge to confidentiality is being made in
18 accordance with this specific paragraph of the Order. The parties shall attempt to resolve each
19 challenge in good faith and must begin the process by conferring within 14 days of the date of
20 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
21 confidentiality designation was not proper and must give the Designating Party an opportunity to
22 review the designated material, to reconsider the circumstances, and, if no change in designation
23 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
24 the next stage of the challenge process only if it has engaged in this meet-and-confer process first
25 or establishes that the Designating Party is unwilling to participate in the meet-and-confer process
26 in a timely manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
28 intervention, the Challenging Party may file and serve a motion challenging the designation under

Civil Local Rule 7, in compliance with Civil Local Rules 79-5 and General Order 62, if applicable, within 30 days of the initial notice of challenge or within 14 days of the parties agreeing that the meet-and-confer process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet-and-confer requirements imposed above. Upon such motion, the Designating Party may present the material to the Court for an in camera review to determine whether and to what extent such information must be disclosed.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, Counsel for the Receiving Party may not disclose any information or item designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to Plaintiff Jesse Perez, members of Plaintiff’s family, friends or associates of Plaintiff, or to any other inmate, parolee, or person previously in the custody of CDCR or any of their relatives, friends, or associates, or the public. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, only Counsel for the Receiving Party may have access to and review any information or item designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Staff employed by Counsel will not disclose any item or information designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” or make copies of any item or information so designated, except as necessary for this litigation. Counsel is responsible for ensuring that their staff complies with this Order.

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7.3 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Counsel in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) during their depositions, non-inmate witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court, and provided that the witness does not leave any deposition with copies of any Protected Material. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Order.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

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(b) promptly notify in writing the Party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

9.1 Production of Protected Material by a Non-Party

The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

9.2 Production of a Non-Party’s Protected Material by a Party.

(a) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(b) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material labeled "CONFIDENTIAL" to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached as Exhibit A.

In the event the Receiving Party believes that documents labeled "CONFIDENTIAL – ATTORNEYS' EYES ONLY" have been disclosed, viewed, or obtained by persons other than Counsel of Record and their support staff, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, including identify the person or persons to whom unauthorized disclosures were made, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom

¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 unauthorized disclosures were made of all the terms of this Order, and (d) request such person or
 2 persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached as
 3 Exhibit A.

4 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 5 MATERIAL

6 When a Producing Party gives notice to Receiving Parties that certain inadvertently
 7 produced material is subject to a claim of privilege or other protection, the obligations of the
 8 Receiving Parties are those set forth in section 10.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 11 seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no
 13 Party waives any right it otherwise would have to object to disclosing or producing any
 14 information or item on any ground not addressed in this Order. Similarly, no Party waives any
 15 right to object on any ground to use in evidence of any of the material covered by this Order.

16 12.3 Filing Protected Material. Without written permission from the Designating Party
 17 or a court order secured after appropriate notice to all interested persons, a Party may not file in
 18 the public record in this action any Protected Material. Protected Material may only be filed
 19 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
 20 issue. A sealing order will issue only upon a request establishing that the Protected Material at
 21 issue is privileged, protectable as a trade secret, is required to protect the safety and security of
 22 any California Department of Corrections and Rehabilitation institution, employee, and inmate, or
 23 otherwise entitled to protection under the law.

24 12.4 Access to Protected Material by Authorized Government Officials. Nothing in this
 25 Order is intended to prevent officials or employees of the State of California or other authorized
 26 government officials from having access to Protected Material to which they have access in the
 27 normal course of their official duties.

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1 12.5 Not an Admission. This Order is entered solely for the purpose of facilitating the
2 exchange of documents and information between the parties to this action without involving the
3 Court unnecessarily in the process. Nothing in this Order nor the production of any information
4 or document under the terms of this Order nor any proceedings pursuant to this Order shall be
5 deemed to have the effect of an admission or a waiver by any party or of altering the
6 confidentiality or non-confidentiality of any such document or information, or altering any
7 existing obligation of any party or the absence of obligation.

8 13. FINAL DISPOSITION

9 (a) Within 60 days after the final disposition of this action, as defined in paragraph 4,
10 each Receiving Party must return all Protected Material to the Producing Party for destruction or
11 destroy such material, subject to the exceptions set forth in section 13(b). As used in this
12 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and
13 any other format reproducing or capturing any of the Protected Material. Whether the Protected
14 Material is returned, or destroyed, the Receiving Party must submit a written certification to the
15 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day
16 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
17 returned and (2) affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the Protected
19 Material, other than the exceptions set forth in section 13(b).

20 (b) Notwithstanding this provision, Counsel of Record are entitled to retain an archival
21 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
22 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
23 consultant and expert work product, even if such materials contain Protected Material. In
24 addition, Counsel of Record is not required to destroy or return copies of Protected Material that
25 may be stored on back-up tapes created in the Receiving Parties normal course of business and
26 retained for disaster-recovery purposes. Any such archival copies that contain or constitute
27 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3 Date: August 26, 2014

/S/ MATTHEW D. BENEDETTO

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11 Date: August 26, 2014

/S/ JENNIFER J. NYGAARD

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William C. Kwong
Supervising Deputy Attorney General
Jennifer J. Nygaard
Deputy Attorney General
*Attorneys for Defendants Burris, Gates, Gongora,
Healy, Pimentel, and Prelip*

ORDER

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

21 DATED: August 27, 2014

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The Honorable Vince Chhabria
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address],

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____, 2014 in the case of *Perez v. Prelip*, No. C 13-5359 VC (PR).

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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